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United Nations Commission on International Trade Law

Thirty-ninth session

Summary record (partial)* of the 835th meeting**
Held at Headquarters, New York, on Friday, 7 July 2006, at 10 a.m.

Chairman: Mr. Karangizi ..... (Uganda)

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* No summary record was prepared for the rest of the meeting.
** No summary records were prepared for the 828th to 834th meetings.

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06-42068 (E)

In the absence of Mr. Abascal Zamora (Mexico), Mr. Karangizi (Uganda) took the Chair.

The meeting was called to order at 10.25 a.m.

The discussion covered in the summary record began at 10.55 a.m.

Adoption of the report of the Commission (*continued*) (A/CN.9/XXXIX/CRP.1/Add.7, 9 and 10)

Finalization and adoption of legislative provisions on interim measures and the form of arbitration agreement and of a declaration regarding the interpretation of articles II (2) and VII (1) of the 1985 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (continued)

A/CN.9/XXXIX/CRP.1/Add.7

1. *Paragraph 1 was adopted.*

2. **Mr. Castello** (United States of America) suggested that in the second and fifth lines of paragraph 2, the words "A court" and "The court", respectively, should be replaced by the word "Courts", in order to bring the paragraph into line with the revised paragraph 27 of document A/CN.9/XXXIX/CRP.1/Add.8.

3. *It was so decided.*

4. *Paragraph 2, as amended, was adopted.*

5. **Ms. Giassa** (Canada) proposed that the words "including where the place of arbitration proceedings is in a State other than the court's" should be deleted.

6. **The Chairman** said that those words were intended to serve as the heading for paragraphs 4, 5 and 6. The Secretariat would therefore amend the format as appropriate.

7. *Paragraph 3, as amended, was adopted.*

8. *Paragraphs 4 to 6 were adopted.*

9. **Mr. Castello** (United States of America) suggested that in the ninth line of paragraph 7, the word "placed" should be replaced by the words "could place".

10. *It was so decided.*

11. *Paragraph 7, as amended, was adopted.*

12. *Paragraphs 8 and 9 were adopted.*

13. **Mr. Castello** (United States of America) suggested that, in the fifth line of the first subparagraph of paragraph 10, the word "would" should be replaced by the word "might". Furthermore, in the fifth line of the second subparagraph of paragraph 10, the word "proceedings" should be replaced by the word "proceeding".

14. *It was so decided.*

15. *Paragraph 10, as amended, was adopted.*

16. **Mr. Castello** (United States of America) proposed that in the third line of paragraph 11, the phrase "it was necessary" should be replaced by the phrase "it was desirable", which more accurately reflected the Commission's discussion on the subject.

17. *It was so decided.*

18. *Paragraph 11, as amended, was adopted.*

19. *Paragraphs 12 to 15 were adopted.*

20. *Document A/CN.9/XXXIX/CRP.1/Add.7, as amended, was adopted.*

A/CN.9/XXXIX/CRP.1/Add.9 (continued)

21. **The Chairman** invited the Commission to reopen its consideration of paragraph 2 of document A/CN.9/XXXIX/CRP.1/Add.9, which it had adopted at the 827th meeting.

22. **Mr. Markus** (Switzerland), Rapporteur, suggested that the two references to the draft declaration as an "interpretative instrument" should be changed to "recommendation".

23. **Mr. Chan** (Singapore) said that since the term "interpretative instrument" had been used by the Commission in the present context, both during the present session and in previous sessions, and since the term was also used in paragraphs 3 and 4 of the document, the suggested change might interrupt the flow of the ideas contained in the document and cause confusion vis-à-vis the records of previous meetings of the Commission.

24. **Mr. Castello** (United States of America) said that his delegation supported the suggestion of the Rapporteur. While he fully understood the concerns raised by the representative of Singapore, the meaning of the term "interpretative instrument" as used in paragraphs 3 and 4 of the document was quite clear,

and the suggested change to paragraph 2 was therefore entirely appropriate.

25. **Mr. de Medeiros** (Brazil) said that his delegation also supported the suggestion of the Rapporteur, because the term "interpretative instrument" was a little too strong, and its use might deter certain countries from ratifying the conventions of the Commission.

26. **Mr. Markus** (Switzerland), Rapporteur, suggested that an effective compromise might be to delete both occurrences of the word "interpretative" in paragraph 2.

27. **Mr. de Medeiros** (Brazil) said that the word "instrument", which often referred to contractual matters in the context of the law of treaties, seemed too strong. He would therefore prefer to use the term "interpretative recommendation".

28. **Mr. Martens** (Germany) said that his delegation supported the remarks of the representative of Brazil. The term "instrument" was generally used in public international law to refer to a binding instrument and would send the wrong signals in the present context. He would therefore suggest that the word "recommendation" should be used.

29. **Ms. Power** (Australia) wondered whether, in paragraph 2, the term "interpretative instrument" might be replaced by the words "recommendation in writing" in the first instance and by the word "writing" in the second instance.

30. **Mr. Sekolec** (Secretary of the Commission) suggested that the term "interpretative instrument" should be replaced by the word "recommendation" in both instances in paragraph 2 and by the word "document" in paragraphs 3 and 4.

31. *It was so decided.*

32. *Paragraphs 2 to 4, as amended, were adopted.*

A/CN.9/XXXIX/CRP.1/Add.10

33. *Paragraphs 1 to 7 were adopted.*

34. *Annex I was adopted.*

35. *Annex II was adopted.*

36. *Document A/CN.9/XXXIX/CRP.1/Add.10 was adopted.*

Renumbering of revised articles of the UNCITRAL Model Law on International Commercial Arbitration

37. **Mr. Stewart** (United States of America) expressed concern that national legislatures might renumber the revised articles of the Arbitration Model Law because they were not comfortable with the Latin numbering system. He therefore proposed that the secretariat should renumber the revised articles so as to make the Model Law more user-friendly.

38. **Mr. Sekolec** (Secretary of the Commission) said that, rather than having to renumber the entire Model Law, which would be disruptive, the secretariat could replace the series "bis", "ter" and so on with letters, if the Commission so decided.

39. **Mr. Sandoval** (Colombia) supported the proposal to replace the Latin numbering system with letters.

40. **Ms. Rodríguez Pineda** (Guatemala) said that numbering the revised articles with letters might give the impression that those articles were subparagraphs rather than separate articles. Another possibility would be to simply change "bis" to "two", "ter" to "three" and so forth.

41. **Ms. Moss** (United Kingdom) endorsed the proposal to renumber the Model Law so as to make it more user-friendly.

42. **Mr. Sekolec** (Secretary of the Commission) clarified that, if the lettering option was adopted, the articles would be renumbered as follows: article 2 bis would become article 2 (a); article 17 would remain as it was; article 17 bis would become article 17 (a); article 17 ter would become 17 (b) and so forth. Similarly, chapter IV bis would become chapter IV (a).

43. **Ms. Power** (Australia) expressed her full support for the proposal to replace the Latin numbering system with letters.

44. **Mr. Sekolec** (Secretary of the Commission) said, with respect to the statement by the delegation of Guatemala, that such a solution would constitute a departure from precedent.

45. **Ms. Rodríguez Pineda** (Guatemala) reiterated that her delegation was not comfortable with the use of letters but that it would support whichever solution the Commission chose to adopt.

46. **The Chairman** suggested that the Secretariat should make the editorial changes as proposed, abiding by the relevant editorial guidelines.

47. *It was so decided.*

The meeting rose at 1.05 p.m.